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16588

OCT 8 1 1989 -3 25 PM

**INTERSTATE COMMERCE COMMISSION**

LEONARD A POTTER

DIAL DIRECT (212) 309-6123

October 30, 1989

Ms. Noretta R. McGee  
Secretary, Interstate Commerce  
Commission  
Washington, D.C.

9-304A623

I have enclosed an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is Equipment Lease Agreement No. 1990A together with the Lease Schedule thereto (the "Lease"). The Lease is a primary document and is dated as of October 18, 1989.

The names and addresses of the parties to the Lease are as follows:

**Lessor:**

Connell Finance Company, Inc.  
45 Cardinal Drive  
Westfield, New Jersey 07090-1099

**Lessee:**

Cargill Incorporated  
15407 McGinty Road West  
Minnetonka, Minnesota 55440

A description of the equipment covered by the Lease follows: eighty-eight 3560 cu ft. covered hopper cars built by ACF in 1967 and rebuilt by Warren Car, Serial Nos. GWIX 2000 through 2087.

Ms. Noreta R. McGee

-2-

October 30, 1989

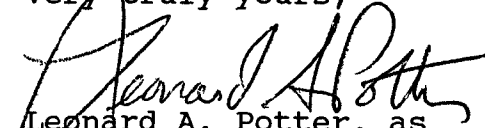
A filing fee of \$15.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Leonard A. Potter, Esq.  
Morgan, Lewis & Bockius  
101 Park Avenue  
New York, NY 10178

A short summary of the document to appear in the index follows:

Lease between Connell Finance Company,  
as Lessor, and Cargill Incorporated, as  
Lessee, dated as of October 18, 1989.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Leonard A. Potter", is written over the typed name.

Leonard A. Potter, as  
representative in fact of  
Connell Finance Company, Inc.

**Interstate Commerce Commission**

Washington, D.C. 20423

10/31/89

OFFICE OF THE SECRETARY

Leonard A Potter  
Morgan Lewis & Bockius  
101 Park Ave.  
New York, N.Y. 10178

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/31/89 at 3:25pm and assigned recordation number(s). 16588

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

16588  
RECORDED IN FILE 148

OCT 31 1989 -3 25 PM

INTERSTATE COMMERCE COMMISSION

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EQUIPMENT LEASE AGREEMENT

Dated as of October 18, 1989

Between

CONNELL FINANCE COMPANY, INC.  
(Lessor)

and

CARGILL INCORPORATED  
(Lessee)

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To the extent this Lease constitutes chattel paper within the meaning of any applicable Uniform Commercial Code provision, only the counterpart hereof marked "original" shall be deemed chattel paper and all other counterparts shall be deemed and marked "duplicates".

EQUIPMENT LEASE AGREEMENT

Lease Agreement made as of this 18th day of October, 1989, between CONNELL FINANCE COMPANY, INC. ("CONNELL") ("Lessor"), a New Jersey corporation, having its principal place of business located at 45 Cardinal Drive, Westfield, New Jersey 07092, and CARGILL INCORPORATED ("Lessee"), a Delaware corporation, having its principal place of business located at 15407 McGinty Road West, Minnetonka, Minnesota 55440.

1. LEASE AGREEMENT: Subject to the conditions in Section 2, Lessor hereby agrees to purchase from GWI Leasing Corporation ("GWI" or "Remanufacturer") and lease to Lessee and Lessee hereby rents from Lessor all the machinery, equipment and other personal property ("*Equipment*") described in the Equipment lease schedule which will be executed by Lessor and Lessee in the form attached hereto and incorporated herein (the "*Schedule*") upon the terms and conditions set forth herein, provided that the Lessor shall have no obligation to enter into any Schedule after December 31, 1990. Whenever reference is made herein to "this Lease" it shall be deemed to include the Schedule(s) identifying all items of Equipment, all of which constitute one undivided lease of the Equipment, and the terms and conditions of which are incorporated herein by reference.

2. CONDITIONS PRECEDENT: The obligation of Lessor to purchase and lease any of the Equipment to Lessee hereunder shall be subject, on or as of the acceptance date for such Equipment, to (i) Lessee's acceptance of such Equipment, as evidenced by Lessor's receipt of an

acceptance certificate in form and substance acceptable to Lessor with respect thereto; (ii) Lessee's execution and delivery, at Lessee's expense, of such documents as Lessor may reasonably deem to be necessary or desirable (each in form and substance satisfactory to Lessor), including, without limitation, an opinion of Lessee's counsel, a certificate(s) of officers of Lessee, Uniform Commercial Code financing statements and other filings and publications as may be appropriate with respect to Lessor's interest in the Equipment including filings with the United States Interstate Commerce Commission; (iii) there not having occurred, since December 31, 1988, any material adverse change in the financial condition of Lessee or in Lessee's ability to perform its obligations hereunder; (iv) there having occurred no change in applicable law that would have a material adverse impact on the transactions contemplated by this Lease (unless Lessor and Lessee shall have agreed upon appropriate adjustments and indemnities to compensate for such change); (v) Lessee's representations and warranties contained in this Lease being true and accurate as if made on and as of such date, and Lessee's having performed and complied with all of its covenants and obligations hereunder and under any purchase agreement; (vi) no Event of Default or event which with the passage of time, giving of notice, or both, would become a default having occurred hereunder; (vii) evidence of compliance with the insurance provisions of this Lease have been delivered to Lessor; and (viii) receipt of a bill of sale from GWI in form satisfactory to Lessor.

**3. REPRESENTATIONS AND WARRANTIES: Lessee represents and warrants that:**

(a) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; has all requisite corporate power and authority and all necessary licenses and permits to own and operate its respective properties and to carry on its business as now conducted; and is duly licensed or qualified and is good standing as a foreign

corporation in each jurisdiction in which such qualification is necessary to carry on its business as now conducted.

(b) This Lease and each other agreement related to the lease of Equipment contemplated hereby to which Lessee is a party (the "Operative Agreements") have been duly authorized, executed and delivered by Lessee and constitute the legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their respective terms.

(c) There is no fact which Lessee has not disclosed to Lessor in writing which materially affects adversely nor, so far as Lessee can now foresee, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of Lessee and its subsidiaries.

(d) There are no proceedings pending or, to the knowledge of Lessee, threatened against or affecting Lessee or any of its subsidiaries in any court or before any governmental authority or arbitration board or tribunal which concerns the Equipment, this Lease, any of the Operative Agreements or the lease of Equipment contemplated hereby or which, if adversely determined, would materially and adversely affect Lessee's ability to perform its obligations under any of the Operative Agreements. Lessee is not in default with respect to any material order of any court or governmental authority or arbitration board or tribunal.

(e) The execution and delivery by Lessee of each of the Operative Agreements and compliance by Lessee with all of the provisions of said instruments (i) are within the corporate powers of Lessee and (ii) will not violate any provisions of any law, rule or regulation or any order of any court or governmental authority or agency and will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under the Articles of Incorporation or By-Laws of Lessee or any indenture, mortgage, conditional sale, loan or credit agreement or other instrument to which Lessee is a party or by which it may be bound or result in the imposition of any liens or encumbrances on any property of Lessee.

(f) No Event of Default as defined in this Lease has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute an Event of Default as herein defined. Neither Lessee nor any of its subsidiaries is in default in the payment of principal of or interest on any indebtedness for borrowed money and no material default by Lessee or any of its subsidiaries (which default cannot be cured within any applicable grace period) has occurred under any instrument or agreement pursuant to which any indebtedness for borrowed money in excess of \$10,000,000 has been issued.

(g) No consent, approval or authorization of any governmental authority is required on the part of Lessee in connection with the execution and delivery and performance of any of the Operative Agreements and Lessee has complied with all applicable provisions of law requiring the designation, declaration, filing, registration and/or qualification with any governmental authority in connection with the execution and delivery and performance of said instruments.

(h) All Federal, State and Foreign income tax returns required to be filed by Lessee have, to the best of its knowledge, been filed, and all taxes which are shown to be due and payable in such returns have been paid. No material controversy in respect of additional income taxes due is pending or, to the knowledge of Lessee, threatened, which controversy if determined adversely would materially and adversely affect Lessee's ability to perform its obligations under any of the Operative Agreements. The provision for taxes on the books of Lessee is adequate for all open years, and for its current fiscal period.

4. **TERM:** The obligations under this Lease shall commence upon the written acceptance thereof by Lessor and shall end upon full performance and observance of each and every term, condition and covenant set forth in this Lease, each Schedule thereto and any extensions thereof. The Lease term of the Equipment listed in each Schedule shall commence on the date that the



Lessor purchases such items from GWI Leasing Corporation as described in Section 34 hereof and shall terminate on the last day of the term stated in such Schedule unless such Schedule has been extended or otherwise modified in writing and signed by Lessor and Lessee. Lessor, at its option, may terminate its obligation to purchase and lease any unit of Equipment that has not been delivered to Lessee prior to December 31, 1990.

5. LESSEE CERTIFICATES: Lessee agrees that it will furnish directly to Lessor and any Collateral Assignee (as defined in Section 21 hereof) the following:

(a) On the date that each Schedule is entered into, a certificate, signed by an officer of Lessee, to the effect that the signer thereof has caused to be reviewed the terms and provisions of the Lease and that at the date of said certificate is not aware of any default in compliance by Lessee with any of the covenants, terms and provisions of the Lease or the other Operative Agreements, or if the signer is aware of any such default, he shall disclose in such certificate the nature thereof and the nature of the action Lessee is taking or proposes to take with respect thereto; and

(b) Any financial information generally made available to the public.

(c) A prompt notification if Lessee's commercial paper rating falls below A-1/P-1.

6. RENTAL PAYMENTS: The rent for the Equipment described in each Schedule shall be due and payable on the dates set forth therein, or if not a business day, on the next preceding business day, and for the periods there indicated. Such rent shall be payable in immediately available funds by wire transfer to such place as Lessor may, from time to time, designate in writing to Lessee.

7. DELIVERY AND INSTALLATION: Lessee will select the type, quantity and supplier of each item of Equipment designated in the appropriate Schedule. Lessor shall have no liability for any delivery or failure by the supplier to fill the purchase order or meet the conditions thereof. Lessee at its expense, will pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Equipment.

8. WARRANTIES: LESSOR, NOT BEING THE REMANUFACTURER OF THE EQUIPMENT NOR THE REMANUFACTURER'S AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages. Lessor shall have no obligation to install, erect, test, adjust, service, or maintain the Equipment. Lessee shall look to the Remanufacturer and/or seller for any claims related to the Equipment.

NOTWITHSTANDING THE FOREGOING, LESSEE'S OBLIGATIONS TO PAY THE RENTALS OR OTHERWISE UNDER THIS LEASE SHALL BE AND ARE ABSOLUTE AND UNCONDITIONAL.

To the extent held by Lessee, Lessee hereby assigns all Remanufacturer's and/or seller's warranties with respect to the Equipment to Lessor. To the extent permitted by the Remanufacturer or seller, during the term that this Lease is in effect and provided Lessee is not in default hereunder, Lessor shall make available to Lessee all Remanufacturer's and/or seller's warranties with respect to Equipment.

9. TITLE TO AND LOCATION OF EQUIPMENT: Title to each item of Equipment leased hereunder shall remain with Lessor at all times and Lessee shall have no right, title or interest therein except as expressly set forth in this Lease. Lessee, at its expense, will protect and defend Lessor's title to the Equipment and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes except for (i) those created by, through or under Lessor which are unrelated to the transactions contemplated hereby, (ii) liens granted by the Lessor for the benefit of any Collateral Assignee, and (iii) for taxes not yet due and payable or diligently contested by an appropriate challenge or appeal instituted by Lessee (unless such contest could result in a material danger of the sale, forfeiture or loss of the Equipment). Lessor assumes no liability and makes no representation as to the treatment by Lessee of this Lease, the Equipment or the Rental Payments for financial statement or tax purposes.

All items of Equipment shall at all times be and remain personal property. The Equipment shall be delivered to the location specified in the Schedule with respect thereto. Lessee shall at all times display notice of Lessor's ownership of the Equipment by affixing to each item of Equipment an identifying stencil or plate stating "CONNELL FINANCE COMPANY AS OWNER AND LESSOR" and Lessee will not alter, deface, cover or remove such ownership identification. Lessee will add to such stencil or plate the interest of any Collateral Assignee if so requested.

10. **USE OF EQUIPMENT, INSPECTION AND REPORTS:** Lessee may possess and use the Equipment in accordance with this Lease, provided that any such use is in conformity with all applicable laws, any insurance policies, and any warranties of the Remanufacturer with respect to the Equipment. Prior to the seventh (7th) anniversary of the end of the Lessor's taxable year in which the Funding Date (as defined in Section 34) falls, Lessee shall restrict use of the Equipment to the continental United States. Lessor shall have the right, upon reasonable prior notice to Lessee and during Lessee's regular business hours, to inspect the Equipment at the premises of Lessee or to the extent reasonable wherever the Equipment may be located. Lessee shall promptly notify Lessor of all details arising out of any alleged encumbrances on the Equipment or any accident which may result in a claim against Lessor allegedly resulting from the use or operation thereof, or of its intent to operate the Equipment outside the continental United States.

Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. Lessee shall not use the Equipment to transport any substance or other material designated in Section 172 or Section 173 of Title 49 of the Code of Federal Regulations, as it may be amended or any successor provision thereto, and shall not modify or alter or make any additions or improvements to any Equipment in any manner which will decrease the value, utility or useful life of such Equipment. Any parts installed or replacements made by Lessee upon any item of Equipment shall be considered accessions to such Equipment and title shall be immediately vested in Lessor at no cost or expense to Lessor, except, in the case of parts installed upon any Equipment which are not replacements, title shall remain with Lessee if (i) such parts are readily removable without damage to the Equipment, (ii) such parts are removed by Lessee at its sole cost and expense prior to the return of the Equipment to Lessor and (iii) such parts are not required by law to be attached.

11. **OPERATING RULES AND REGULATIONS:** Lessee agrees to comply with all local, state and Federal governmental laws, regulations and requirements relating to the operation and/or use of the Equipment, including the Interchange Rules and all other rules of the Association of American Railroads (or any successor thereto) and the Interstate Commerce Commission. In case any equipment or appliance on any Equipment shall be required to be changed or replaced, or any additional or other equipment or appliance is required to be installed on such Equipment in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such changes, additions and replacements at its own expense and title thereto shall be immediately vested in Lessor.

12. **FURTHER ASSURANCES:** Lessee shall execute and deliver to Lessor upon Lessor's request such instruments and assurances and take such other actions as Lessor in the reasonable exercise of its discretion deems necessary or advisable for the confirmation or perfection of this Lease and Lessor's rights hereunder or for the effectuation of the intent hereof. In furtherance thereof, Lessor may file or record this Lease or a financing statement with respect thereto so as to give notice to any interested parties. Lessor is authorized to file a financing statement concerning the Equipment signed in accordance with the Uniform Commercial Code. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. Lessee, at its own expense, will cause this Lease to be filed in accordance with 49 U.S.C. Section 11303(a) with the Interstate Commerce Commission.

13. **EVENT OF LOSS:** All risk of loss, damage, theft or destruction to each item of Equipment shall be borne by Lessee. No such loss, damage, requisition, condemnation, theft or

destruction of the Equipment, in whole or in part, shall impair the obligations of Lessee under this Lease all of which shall continue in full force and effect and Lessee \* shall either (i) place the affected Equipment in good repair, condition and working order within 90 days of such loss or (ii) if the affected Equipment is a total loss, pay Lessor within 60 days of such loss the sum of the greater of any settlement amount received pursuant to Interchange Rule 107 of the Association of American Railroads ("AAR") or Stipulated Loss Value with respect to such affected Equipment (which Stipulated Loss Value shall be the amount listed on the applicable Schedule) as at the rent payment date immediately preceding the date of loss plus all rent due or accrued, on a per diem basis, prior to the date such Stipulated Loss Value is paid less the net amount of the recovery, if any, actually received by Lessor from insurance or otherwise for such loss, damage, theft or destruction. After compliance with the foregoing to Lessor's satisfaction and provided Lessee is not in default under this Lease, Lessee shall be subrogated to Lessor's right with respect to any insurance policies (other than under policies paid for by Lessor) or claims for reimbursement by others with respect to such loss, damage, theft or destruction.

14. **INSURANCE:**

a. Public Liability and Property Damage Insurance. Lessee represents and warrants that it will maintain in effect, at its own expense (i) public liability insurance with combined single limit coverage in an amount not less than the greater of (a) \$10,000,000 or (b) such other amounts as is customary in the industry for equipment used in a similar manner as the Equipment and (ii) such other property damage insurance (exclusive of manufacturer's product liability insurance) with respect to the Equipment in an amount not less than \$5,000,000. All insurance provided for in this section shall be effected with insurance companies which have at least a Best rating of "B" and shall provide coverage consistent with prudent industry practice.

b. Insurance Against Loss or Damage to Equipment. Lessee represents and warrants that it will maintain in effect all-risk insurance covering the Equipment including fire and explosion, and lightning and electrical damage, provided that such insurance shall at all times while the Equipment is subject to this Lease be for an amount which, when paid, will be not less than the Stipulated Loss Value for the Equipment from time to time as set forth in the Schedule.

c. Lessor as Additional Insured; Notice. Any policies of insurance carried in accordance with this Section and any policies taken out in substitution or replacement for any such policies (i) shall be amended to name Lessor, as owner of the Equipment and the Collateral Assignee, if any, as additional named insureds thereunder, (ii) with respect to insurance carried in accordance with paragraph (b) covering the Equipment shall be made payable to the Collateral Assignee or, if none, to Lessor, as loss payee. Lessee shall furnish certificates to Lessor as proof of such insurance and shall provide for at least thirty (30) days written notice of cancellation or material change in coverage to Lessor.

d. Primary Insurance; Breach of Warranty Coverage. The policies of insurance under paragraph (a) shall provide (i) that such insurance shall be primary insurance and that the insurers thereunder shall be liable thereunder without right of contribution from any other insurance coverage effected by or on behalf of Lessor or the Collateral Assignee, if any, and (ii) that in respect of the interest of Lessor (and the Collateral Assignee, if any), such policies shall (a) not be invalidated by, and (b) shall insure Lessor (and the Collateral Assignee, if any), and any claims for losses shall be payable notwithstanding any action or inaction of Lessee or any breach of any condition or warranty in any policy by Lessee.

15. **EXPENSES, FEES AND TAXES:** In addition to the Rental Payments, Lessee shall pay promptly when due, all costs, expenses, fees, charges, levies, withholdings, and taxes (including sales, use, excise, personal property, ad valorem, value added, leasing, stamp and documentary)

(collectively "Taxes") and any penalties, fines or interest required to be paid in connection therewith incurred in connection with the titling, licensing, registration, use, rental, shipment, transportation, delivery, purchase, ownership or operation of the Equipment, and on or relating to this Lease and any Schedule. In case any report or return is required to be filed with respect to any taxes, Lessee will, to the extent legally permissible, file such report or return or notify Lessor in writing to the extent Lessor must file such report or return in sufficient time for Lessor to make such filing of the required report or return. All reports and returns filed by Lessee will be in Lessee's name and account number. To the extent reasonably requested by Lessor, Lessee will promptly supply Lessor a copy of such reports or returns. Lessee shall promptly reimburse Lessor on an after-tax basis for any (i) Taxes charged to or assessed against Lessor except for state or federal net income taxes or franchise taxes other than franchise taxes on gross revenues or franchise taxes in the nature of sales, use or property taxes, and (ii) any penalties, fines or interest that Lessor is required to pay in connection with any Taxes for which Lessee is required to reimburse Lessor under clause (i) above.

If Lessee should fail to pay any of the costs, expenses, fees, charges and taxes for which Lessee is liable hereunder, Lessor may, but shall not be required to pay the same for the account of Lessee. Lessee shall reimburse Lessor, on the next subsequent rental date, as additional rental hereunder, for the full amount of any costs, expenses, taxes or other charges paid by Lessor which constitute an obligation of Lessee hereunder.

16. LESSOR'S PERFORMANCE OF LESSEE'S OBLIGATIONS: If Lessee shall fail to duly and promptly perform any of its obligations under this Lease with respect to the Equipment, Lessor may (at its option) perform any act or make any payment which Lessor deems necessary for the maintenance and preservation of the Equipment and Lessor's title thereto, including



payments for satisfaction of liens, repairs, taxes, levies and insurance and all sums so paid or incurred by Lessor, together with interest as provided below, and any reasonable legal fees incurred by Lessor in connection therewith shall be paid as additional rent under this Lease and payable by Lessee to Lessor on the next subsequent rental date or, if none, on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Lessee.

17. LATE CHARGES: Should Lessee fail to duly pay any part of any Rental Payment or other sum to be paid to Lessor under this Lease, then Lessee shall pay interest on such delinquent payment from the due date until paid at a rate of 2% over Chase Manhattan Bank, N.A. Prime Rate or base lending rate per annum not to exceed the highest legal contract rate of interest.

18. INDEMNIFICATION: Lessee assumes liability for, and hereby agrees to indemnify, protect and keep harmless Lessor, its agents, employees, officers, directors, successors and assigns (including any Collateral Assignee) on an after tax basis from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, cost and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, leasing or return of any item of Equipment, regardless of where, how and by whom operated, or any failure on the part of Lessee to perform or comply with any conditions of the Lease or other Operative Agreements. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or other termination of this Lease. Such indemnity shall not extend to any such liabilities, losses or expenses to the extent

resulting from the gross negligence or willful misconduct of the Lessor or to the extent resulting from acts occurring wholly after the expiration of the original term of the Lease or any renewal period and any applicable storage period, or to the extent arising solely from the breach of the Lessor's warranty of quiet enjoyment or resulting from a transfer of any interest of the Lessor in the Equipment or the Lease, unless such transfer arises as a result of an event of default under the Lease or by reason of a casualty occurrence. Lessee is an independent contractor and nothing contained in this Lease shall authorize Lessee or any other person to operate any item of Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor.

19. NO OFFSET: This lease is a net lease and all Rental Payments shall be paid when due by Lessee irrespective of any set-off, counterclaim, recoupment, defense or other right which Lessee may have against Lessor, the supplier of the Equipment, or any other party. This section shall not be construed so as to prohibit any separate action by Lessee against Lessor with respect to any right or action arising out of or related to this Lease or the transactions contemplated hereby.

20. ASSIGNMENT BY LESSEE: Without Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may not, by operation of law or otherwise, (a) assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest therein or (b) sublet or lend the Equipment or permit same to be used by anyone other than Lessee or an affiliate or subsidiary of Lessee. Except as permitted by the foregoing sentence or with the written consent of Lessor, Lessee agrees that it shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment. Irrespective of any permitted sublease, transfer, assignment, pledge, hypothecation or other disposition, Lessee agrees to remain primarily liable to Lessor under all terms and conditions of this Lease.

21. **ASSIGNMENT BY LESSOR:** For the purpose of providing funds for financing the purchase of the Equipment or for any other purpose, Lessee agrees (a) that Lessor may assign, sell or encumber all or any other part of this lease, the Equipment and the Rental Payments hereunder (any such assignee taking such assignment as collateral being referred to as a "Collateral Assignee") and (b) in the event of any such assignment of Rental Payments hereunder and written notice thereof to Lessee, to unconditionally pay directly to any such assignee all rentals and other sums due or to become due under this Lease to the extent assigned and (c) that the Equipment leased hereunder may be mortgaged by Lessor under a chattel mortgage. In any such event, the right, title and interest of the mortgagee under any such chattel mortgage shall by the express terms of such chattel mortgage be subject to the leasehold interest of Lessee in and to the Equipment hereunder. THE RIGHTS OF ANY SUCH ASSIGNEE SHALL NOT BE SUBJECT TO ANY DEFENSE, COUNTERCLAIM OR SET OFF WHICH LESSEE MAY HAVE AGAINST LESSOR, REMANUFACTURER OR ANY OTHER PERSON. Notwithstanding the foregoing, any such assignment (a) shall be subject to Lessee's right to possess and use the Equipment so long as Lessee is not in default under this Lease and (b) shall not release any of Lessor's obligations hereunder or any claim which Lessee has against Lessor. Lessor agrees that no such assignment, conveyance or transfer shall knowingly be made to any competitor, customer (or prospective customer, designated such in writing by Lessee) or supplier of Lessee's Salt Division without Lessee's consent. Lessee agrees to execute for the benefit of any Collateral Assignee such consents and acknowledgments as are customary in such transactions.

22. **MAINTENANCE, REPAIRS AND RETURN OF EQUIPMENT:** Lessee shall, at no expense to Lessor, maintain the Equipment in good repair and operating condition so that the Equipment complies with the applicable interchange standards set for such Equipment by the

Association of American Railroads ("AAR"), the Equipment is in good operating order by industry standards and fit for the purposes for which they were designed, and satisfy the tests described below;

- a. All damaged or broken parts will be repaired to meet to AAR Specifications;
- b. Exterior and interior surfaces will be free of rust and corrosion, except minor surface rust, and painted with Lessee's standard paint scheme, free of any and all advertising and notices other than receiving numbers and Lessee's corporate identification, and Lessor's stencil;
- c. Equipment will conform to United States Department of Transportation regulations or those of any other government agency having jurisdiction over the use and operation of the Equipment;
- d. Equipment will be returned with undercarriage systems, including any related trucks and rollers of a type, size and quality standard according to AAR specifications, and will be in good repair and operating condition;
- e. Subject to the requirements of this Section 22, including paragraphs (a), (b), (c), and (d) hereof, Lessee shall not be liable for reasonable wear and tear of the Equipment.

Upon payment in full of all Rental Payments and all other sums due under this Lease for the Equipment described in any Schedule, Lessee will, at its expense, insure and deliver such items of Equipment to Lessor within 1000 miles of Ludlowville, New York or to any connecting carrier designated by Lessor in writing. In the Event of Default by Lessee under this Lease, Lessee will return all Equipment to Lessor in the same manner as above. All Equipment so delivered by Lessee to Lessor shall be returned to the designated location in the condition described above.

Should Lessor elect to take possession of the Equipment, Lessee shall deliver possession of such Equipment to Lessor and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Equipment so to return such Equipment. For the purpose of delivering possession of any Equipment to Lessor as required above, Lessee will, at its own expense and risk, at Lessor's request: (i) forthwith and in the usual manner cause such Equipment to be transported to the storage tracks of Lessee as Lessee may select, and there assembled in groups of no less than 40 units; (ii) furnish storage of or arrange for Lessor to store such equipment on Lessee's storage tracks until such Equipment has been sold, leased or otherwise disposed of by Lessor, such period not to exceed ninety (90) days, except in the case of a default when such storage period shall be unlimited; and (iii) cause such Equipment to be transported to such interchange point or points as shall be designated by Lessor upon any sale, lease or other disposition of all or any of such Equipment. All movement to and storage of each piece of Equipment at Lessee's storage track is to be at the risk and expense of Lessee.

Upon delivery by Lessee of the Equipment pursuant to the foregoing and upon acceptance thereof by Lessor, the Lessee shall have no further responsibility with respect to said equipment; provided however that such limitation of responsibility shall in no way limit the obligations of the Lessee pursuant to Section 18 or any other Section hereof.

23. **EVENTS OF DEFAULT:** Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Events of Default"):

a. Default by Lessee in payment of any installment of rent to Lessor under this Lease or otherwise and the continuance of such default for ten (10) consecutive days; or

b. Default by Lessee in any payment, except rent due to Lessor under this Lease and the continuance of such default for ten (10) consecutive days after written notice by Lessor of such payment being due; or

c. Default by Lessee in payment or performance of any non-payment, obligation, covenant or liability contained in this Lease or any other agreement or document with Lessor and the continuance of such default for thirty (30) consecutive days after written notice thereof by Lessor to Lessee; or

d. any material warranty, representation or statement made or furnished to Lessor by or on behalf of Lessee proves to have been false in any material respect when made or furnished; or

e. the attempted sale or encumbrance by Lessee of any of the Equipment, or the making of any levy, seizure or attachment thereof or thereon; or

f. dissolution, termination of existence, discontinuance of its business, insolvency, business failure or appointment of a receiver of any part of the property of, or assignment for the benefit of creditors by Lessee or the commencement of any proceedings under any voluntary bankruptcy, reorganization or arrangement laws by or against Lessee; or

g. in the event of an involuntary bankruptcy or the appointment of a receiver without Lessee's consent, such bankruptcy or appointment continues and is ongoing for a period of sixty (60) consecutive days.

**24. REMEDIES OF LESSOR:** Upon the occurrence of any Event of Default and at any time thereafter (subject to any applicable grace provisions) Lessor may without any further notice exercise one or more of the following remedies as Lessor in its sole discretion shall elect: (a) declare all unpaid rentals due and to become due under this Lease to be immediately due and payable; (b) terminate this Lease as to any or all items of Equipment; (c) take possession of the

Equipment wherever found without any liability or suit action or other proceeding by Lessor and remove the same; (d) cause Lessee at its expense to promptly return the Equipment to Lessor pursuant to and in the condition set forth in Section 22; (e) use, hold, sell, lease or otherwise dispose of the Equipment or any item thereof without affecting the obligations of Lessee as provided in this Lease; (f) sell or lease the Equipment or any part thereof, at public auction or by private sale or lease at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by law, any notice in writing of any such sale or lease by Lessor to Lessee not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Lessee; (g) proceed by appropriate action either by law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; (h) exercise any and all rights accruing to a lessor under any applicable law upon a default by a lessee. In addition, Lessor shall be entitled to recover immediately as liquidated damages for loss of a bargain and not as a penalty an amount equal to the Stipulated Loss Value or Fair Market Value ("FMV"), whichever is higher, for all or any portion of Equipment (determined in accordance with the applicable Schedule) as at the rent payment date immediately preceding the date of payment thereof plus all rent due or accrued, on a per diem basis, through the date of such payment, and if not paid when due, together with interest as provided in Section 17. After default, at the request of Lessor and to the extent requested by Lessor, Lessee shall comply with the provisions of Section 22 of this Agreement. Lessor may, but shall not be required to, sell Equipment at private or public sale, in bulk or in parcels, with or without notice, without having the Equipment present at the place of sale; or Lessor may, but shall not be required to, lease, otherwise dispose of or keep idle all or part of the Equipment; and Lessor may use Lessee's premises for any or all of the foregoing without liability for rent, costs, damages or otherwise. The proceeds of sale, lease or other disposition, if any, shall be applied (a) to all Lessor's costs, charges and expenses incurred in taking, removing, holding, repairing

and selling, leasing or otherwise disposing of Equipment; then (b) to the extent not previously paid by Lessee, to pay Lessor the liquidated damages described above and all other sums, including any unpaid rent and any indemnification then remaining unpaid thereon; then (c) to reimburse to Lessee any such sums previously paid by Lessee as liquidated damages; and then (d) any surplus shall be retained by Lessor; Lessee shall pay any deficiency in (a) and (b) forthwith. Should Lessor, however, estimate its actual damages in lieu of or in addition thereto, Lessor shall not be obligated to sell, lease or otherwise dispose of any item of repossessed Equipment hereunder if it would impair the sale, lease or other disposition of similar equipment in the ordinary course of Lessor's business. None of the remedies under this Lease are intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor in law or in equity. Any repossession or subsequent sale or lease by Lessor of any item of Equipment shall not bar an action for a deficiency as herein provided, and the bringing of an action or the entry of judgment against Lessee shall not bar Lessor's right to repossess any or all items of Equipment. In no event shall Lessor be entitled to recover from Lessee more than the sum of (i) the liquidated damages, as defined above (ii) all of Lessor's costs, charges and expenses incurred in taking, removing, holding, repairing and selling, leasing or otherwise disposing of the Equipment, and (iii) any indemnities owed hereunder.

25. SEVERABILITY: Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition and unenforceability without invalidating the remaining provisions hereof. To the extent permitted by applicable law, Lessee hereby waives any provision of law which prohibits or renders unenforceable any provisions hereof in any respect.



26. NOTICES: Any notice or other communication given under this Lease shall be sent to the following address:

(a) If to Lessor at:

Connell Finance Company, Inc.  
45 Cardinal Drive  
Westfield, New Jersey 07092;  
ATTENTION: President

(b) If to Lessee at:

Cargill Incorporated  
Salt Division  
15407 McGinty Road West  
Minnetonka, Minnesota 55345  
ATTENTION: General Transportation Manager

Any such notice or other communication shall, if not actually delivered prior thereto, be deemed to have been delivered five (5) business days after the date when it shall have been mailed by registered or certified mail, all charges prepaid. Notice or other communications transmitted in any other fashion shall not be deemed delivered until actually delivered at the address or party to which notices may be sent. Each party shall notify the other of a change of address for notices to the other party as herein provided.

27. AMENDMENTS AND WAIVERS: This instrument and the Schedule executed by Lessor and Lessee constitute the entire agreement between Lessor and Lessee with respect to the Equipment and the subject matter of this Lease. No term or provision of this Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee. No express or implied waiver by Lessor of any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default whether similar in kind or otherwise.

28. **CONSTRUCTION:** This Lease shall in all respects be governed by and construed in accordance with the laws of the State of New Jersey. The titles of the sections of this Lease are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this Lease in each of its provisions.

29. **PARTIES:** The provisions of this Lease shall be binding upon, and inure to the benefit of, the assigns, representatives and successors of Lessor and Lessee. If there is more than one Lessee named in this Lease, the liability of each shall be joint and several.

30. **LESSEE'S QUIET ENJOYMENT:** So long as Lessee shall pay and perform all of its obligations and covenants hereunder, its quiet enjoyment of the Equipment shall not be disturbed by any party lawfully claiming by, through or under Lessor. By acceptance of any assignment of this Lease, any assignee hereof agrees, with and for the benefit of Lessee, that as long as Lessee shall perform all of its obligations and covenants hereunder, and notwithstanding any default of Lessor, Lessee's quiet enjoyment shall not be disturbed by such assignee or any party lawfully claiming by, through or under such assignee.

31. **TAX INDEMNITY:** Lessee acknowledges that the rent payments provided for in Section 6 and Stipulated Loss Values from the Schedule are computed on the assumption that the Lessor will be entitled to such deductions and other attributes of ownership as are provided to an owner of property (the "Tax Benefits") under the Internal Revenue Code of 1986, as amended and in effect as of the date hereof (the "Code") and all state, city and local income and franchise tax laws of the jurisdiction in which Lessor's principal place of business is located, such jurisdiction being the city of Westfield, county of Union, State of New Jersey (its "Home State") (the Code

and such Home State tax laws being herein referred to as the "Income Tax Laws"), including without limitations, the following: (i) the Lessor will be treated as the owner of each item of Equipment from and after the applicable Funding Date (as defined in Section 34), (ii) the Lease will be treated as a true lease, (iii) for purposes of all Income Tax Laws with respect to each item of Equipment the Lessor will be entitled to deductions for depreciation and/or cost recovery (w) based on a basis at least equal to the portion of Total Equipment cost paid therefore (x) utilizing (A) for federal income tax purposes a recovery period of seven years, the depreciation method in Code Section 168 (b) (1) (A) and (B), a zero salvage value and the half year convention, and (B) for purposes of the Home State tax laws an ADR period of 12 years, the 200% declining balance method of depreciation (switching to SYD method at the time that will permit the most rapid recovery of basis), a zero salvage value and the half-year convention and, (y) commencing on the applicable Funding Date and utilizing a 12-month tax year for the year in which the Funding Date falls, (iv) the only amounts of gross income which the Lessor will realize under the Income Tax Laws in respect of the transactions will be the amounts realized in respect of, and at the times of payment of, Basic Rent and renewal rent pursuant to the Lease, payment of income tax indemnities and payments of Casualty Values, (v) the Lessor will be entitled to utilize the deductions contemplated by the Tax Benefits based on a 34% Federal Income tax rate and the highest marginal applicable Home State tax rate as of the applicable Funding Date, and none of the Tax Benefits will give rise to any tax preference items, and (vi) the Lessor will be entitled to amortize the transaction expenses over the Lease Term at a rate no less rapid than straight line.

Lessee represents and warrants to Lessor that (a) prior to the seventh (7th) anniversary of the end of the Lessor's taxable year in which the Funding Date falls, all amounts includable in the gross income of Lessor with respect to the Equipment will be treated as derived from or allocable to sources within the United States and (b) the amount that Lessor has paid for each item of

Equipment (prior to the refurbishment described in Section 34 hereof) and the amount that Lessor will pay for such refurbishment are equal to the respective invoice prices for such item and for such refurbishment under the invoices therefor that have been submitted to Lessee by GWI Leasing Corporation and GWI Rail Management, and (c) no severable or non-severable improvement will be required by the Lessee in order to complete any item of equipment for its intended use, and (d) from and after the delivery date of each item of Equipment, except as otherwise provided in Section 34, the Lessee will have no investment or obligation to pay any portion of the costs in connection with the acquisition and financing of each such item, and (e) no item of equipment will constitute, at any time during the term of the Lease, tax-exempt use property, and (f) no item of Equipment will be used predominately outside the United States prior to the end of the Lessor's taxable year in which falls the seventh (7th) anniversary of the Funding Date for such item and (g) each item of Equipment has been registered and approved at Lessor's purchase price therefor by the Association of American Railroads and (h) Lessee will commence using each item of Equipment in its business by no later than the Funding Date for such item.

Notwithstanding a loss of Tax Benefits attributable to matters described above, the Lessee shall not be required to make any indemnity payment if the Lessor suffers a loss resulting from (or, in the case of clauses iv, vii, ix below, resulting solely from) (i) its failure to claim the proper deductions or credit unless such failure to claim is supported by an opinion of counsel that there does not exist substantial authority for claiming such benefits; (ii) its being unable to claim deductions or credits because of its status as an entity for tax purposes; (iii) the Lessor's sale, transfer or disposition of the Equipment or its interest in the Lease while the Lessee is not in default thereunder; (iv) a change in any tax laws subsequent to Lease Commencement; (v) the application of Section 465, 467, 469 or 168 (b)(3) of the Code to Lessor or to the Lease; (vi) the

imposition on Lessor of the alternative minimum tax set forth in Section 55 of the Code or the environmental tax set forth in Section 59A of the Code; (vii) Lessor's failure to have sufficient taxable income in any year to utilize the deductions contemplated by the Tax Benefits; (viii) any event or circumstance in connection with which Lessee has paid Stipulated Loss Value (or an amount determined by reference to Stipulated Loss Value) for the relevant item of Equipment; or (ix) Lessor's failure to employ the accrual method of accounting for Federal income tax purposes.

If as a result of any act or omission of Lessee or any sublessee or other person possessing or using the Equipment during the term of Lease (including any act or omission that is permitted hereunder or that constitutes a Specified Act (as defined below) but excluding any act or omission that is required hereunder (other than a Specified Act)) or any misrepresentation of Lessee (other than the representation set forth in (a) above), Tax Benefits are lost, disallowed, eliminated, reduced, recaptured, compromised, delayed or otherwise made unavailable to Lessor (any of the foregoing being hereafter called a "Loss"), Lessee shall pay Lessor, in a lump sum, an amount that, when reduced by all taxes required to be paid by Lessor with respect to the receipt thereof to any local, state, federal or foreign taxing authority (as determined by reference to the maximum tax rates generally applicable, at the time of such payment, under the laws of such taxing authorities, to corporations known as "C corporations" under the Code), will equal the amount necessary to insure that, after taking into account:

- (i) the loss of such Tax Benefits,
- (ii) any additional loss of Tax Benefits that Lessor determines will result from the circumstances giving rise to the loss of the first-mentioned Tax Benefits, and

- (iii) any additional tax benefits that replace the aforementioned Tax Benefits and that were not included in the assumptions used by Lessor in evaluating its investment in the Equipment (the "Lessor Assumptions"),

Lessor will receive at least the same after-tax economic yield and aggregate after-tax cash flow ("Net Return") with respect to this Lease as Lessor would have received had the Tax Benefits referred to herein been or remained available for, and been fully utilized by, Lessor and had the other Lessor Assumptions remained accurate, including the assumption that (except with respect to the receipt of the aforementioned lump sum) Lessor will at all relevant times be subject to tax at the maximum tax rates of such taxing authorities (not including alternative minimum tax rates) established at the effective date of the Lease as being applicable to C corporations, and will be benefited by the Tax Benefits at such maximum rates. For the purposes hereof, a "Specified Act" means any of the following: (i) the prepayment of any amount required to be paid hereunder, (ii) any maintenance, repair, replacement, modification or exchange of or to the Equipment or any item or part thereof, and (iii) any act undertaken in connection with the refurbishment (as contemplated by Section 34 hereof) of any item of Equipment. Lessee shall pay any amount payable pursuant to the preceding sentence within twenty (20) days after receiving written notice from Lessor that Lessor has paid an amount confirming any loss, absence or loss of right to claim, disallowance, or recapture of any of the deductions referred to herein.

By written notice to the Lessor, the Lessee may demand and thereby cause, the detailed calculation for the said payment to be submitted to a nationally recognized independent public accounting firm acceptable to Lessee and Lessor for verification at the cost of the Lessee unless the accounting firm determines that said payment should be less than 95% of the payment

claimed by Lessor in its notice to Lessee. In such case, the cost of such verification will be borne by the Lessor. Such verification shall be completed in no more than 45 days after such notice.

The repair, replacement or destruction of any item of Equipment, not resulting for any reason in payment of any Stipulated Loss Value therefor, shall constitute the act of Lessee for purposes of this Section 31. In the event of a breach of the representation and warranty as stated in (b) above, if any item of income, credit or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States for a given taxable year (any such event being hereinafter referred to as a "Foreign Loss"), then Lessee shall pay to Lessor as an Indemnity, on the next succeeding rent payment date, or in any event within twenty (20) days after written demand to Lessee by Lessor, such amount as, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States, or any foreign tax authority (as determined by reference to the maximum tax rates generally applicable, at the time of such payment, under the laws of such taxing authorities, to corporations known as "C corporations" under the Code), shall equal the sum of: (i) the excess of (x) the federal foreign tax credits which Lessor would have been entitled to for such year had no such Foreign Loss occurred over (y) the federal foreign tax credit to which Lessor was limited as a result of such Foreign Loss and (ii) the amount of any interest, penalties or additions to tax paid by Lessor (whether actually or by offset against a refund or credit) as a result of such Foreign Loss. For purposes of this Section 31, the term "Lessor" shall include the affiliated taxpayer group within the meaning of Section 1504 of the Code of which Lessor is a member. The provisions of this Section 31 shall expire upon conclusion of all statutes of limitations relevant to the provisions of this Section 31.

32. **CONTEST:** Lessor will, upon the request of the Lessee, and at Lessee's expense, contest any loss of Tax Benefits to an appellate court level before any final agreement is made by Lessor and any amounts are paid, provided that Lessor has received an opinion from Lessor's counsel that Lessor would more likely than not prevail in such contest.

Lessor shall give Lessee not less than twenty (20) days' prior written notice of Lessor's intent to take action with respect to contesting or settling any matter concerning the Tax Benefits. Upon demand, Lessee shall pay Lessor an amount equal to all costs and expenses incurred by Lessor, including reasonable attorneys' and accountants' fees and court costs, with respect to any action taken with respect to contesting or settling any matter concerning the Tax Benefits; provided, however, that Lessee may relieve itself of liability for the payment of such costs and expenses by paying to Lessor prior to the start of any such activity, the total amount that Lessee would be liable for under Section 31 herein if the then-current position of the taxing authority were correct, in which event the Lessee shall not be entitled to any refund or credit for the amount of such payment, regardless of the outcome of the dispute with the taxing authority. Lessor shall at its election be relieved of its obligation to contest a loss of Tax Benefits under this Section 32 upon its delivery to Lessee of a written notice waiving its entitlement to an indemnity under Section 31 with respect to such loss. If Lessee requests Lessor to contest a loss of Tax Benefits and Lessor is required under this Section 32 to contest such loss but fails to do so in accordance with the terms hereof, then Lessor shall lose its right to be indemnified under Section 31 with respect to such loss.

33. **LEASE RATE ADJUSTMENTS:** The Rental Payments provided for in Section 6 with respect to each item of Equipment have been computed based on various assumptions supplied by the Lessee. In the event that there are changes in the original lease assumptions, with



respect to any item, Lessor may increase or decrease the Rental Payments and Stipulated Loss Values with respect to such item to preserve the Lessor's net return. Such Rental Payment adjustments for an item may be caused by any one or more of the following:

1. A Funding Date later than March 31, 1990.
2. A change in the Internal Revenue Code ("Code") or a change in the applicable Home State laws or a revision of any of the foregoing which has been proposed by any member of the legislative or executive branch of a relevant government on or before the Funding Date for such item, or a change in any relevant income tax regulations, published administrative interpretations or judicial decisions thereunder which is published or effective on or before the Funding Date for such item.

34. **EQUIPMENT ACQUISITION:** The parties acknowledge that, subject to the conditions in Section 2, Lessor will purchase each item of Equipment for \$8800 from GWI Leasing Corporation and Lessee, as agent for Lessor, will then arrange for the refurbishment of each such item by GWI Rail Management at a cost of \$15,000 per item. Promptly following the completion of refurbishment of an item, Lessee will furnish to Lessor a final acceptance certificate in the form of Annex I hereto with respect to such item (the date of which such certificate is furnished to Lessor being referred to herein as the "Funding Date" for such item) and, provided that such item qualifies for a new AAR birthdate as certified by the AAR (which certification shall be satisfactory to the Lessor), Lessor will, promptly following receipt of such certificate, reimburse to Lessee \$15,000 for the refurbishment of such item; provided that Lessee may not give Lessor more than one such certificate per month (which certificate may cover any number of items) and may not deliver any such certificate after December 20, 1990.

In the event Lessee has not delivered such a certificate as to any item by December 20, 1990, or in the event Lessee rejects any item as not having been properly refurbished, Lessor may demand that Lessee buy, and Lessee agrees that upon receipt of such demand it shall buy, such item from Lessor at any time thereafter specified by Lessor, but no later than December 31, 1990, for a price of \$8800 plus interest computed at the then applicable Chase Manhattan Bank, N.A. Prime Rate per annum on such \$8800, for the period from and including the date such item was originally purchased by Lessor to but excluding the date purchased by Lessee. Lessee agrees to inform Lessor of any such rejection by Lessee promptly after the occurrence thereof.

Rent for Equipment listed on such certificates delivered in 1989 will commence January 1, 1990. Rent for Equipment listed on such certificates delivered in 1990 will commence on the first day of the month following the month in which the certificate is delivered.

Whether or not any such certificate is given as to any Equipment, Lessee's obligations under this Lease are absolute and unconditional (unless and to the extent that Lessee purchases items of Equipment pursuant to this Section 34) and any failure of an item to be properly refurbished shall not be a defense to Lessee's obligations hereunder.

LESSEE HEREBY ACKNOWLEDGES RECEIPT OF AN EXECUTED AND TRUE COPY OF THIS LEASE AND THAT IT IS NON-CANCELLABLE FOR THE ORIGINAL RENTAL TERM.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease to be duly executed.

LESSOR:

LESSEE:

CONNELL FINANCE COMPANY, INC.

CARGILL INCORPORATED

By: [Signature]

By: \_\_\_\_\_

Printed Name: EROUER CONNELL

Printed Name: \_\_\_\_\_

Title: PRESIDENT

Title: \_\_\_\_\_

Date: 10-23-89

Date: \_\_\_\_\_

STATE OF New Jersey  
COUNTY OF Union ss.:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ ss.:

On this 23<sup>rd</sup> day of October, 1989 before me personally known, who being by me duly sworn, says that he is the President of Connell Finance Company, Inc., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

On this \_\_\_\_\_ day of \_\_\_\_\_, 1989 before me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Cargill Incorporated that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]  
\_\_\_\_\_  
Signature of Notary Public  
My Commission expires

\_\_\_\_\_  
Signature of Notary Public  
My Commission expires

VIRGINIA ANTER  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 11, 1994  
RTS:ps  
89-1717w

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease to be duly executed.

LESSOR:

CONNELL FINANCE COMPANY, INC.

LESSEE:

CARGILL INCORPORATED

By: \_\_\_\_\_

By: Galen G. Johnson

Printed Name: \_\_\_\_\_

Printed Name: Galen G. Johnson

Title: \_\_\_\_\_

Title: Salt Division Controller

Date: \_\_\_\_\_

Date: October 23, 1989

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

STATE OF Minnesota )  
COUNTY OF Hennepin ) ss.:

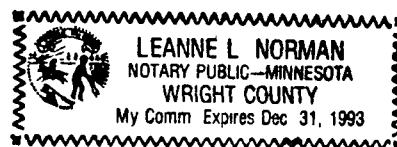
On this \_\_\_\_\_ day of \_\_\_\_\_, 1989 before me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Connell Finance Company, Inc., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

On this 23 day of October, 1989 before me personally known, who being by me duly sworn, says that he is the Salt Div. Controller of Cargill Incorporated that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Signature of Notary Public  
My Commission expires \_\_\_\_\_

Leanne L. Norman  
Signature of Notary Public  
My Commission expires 12/31/93

RTS:pss  
89-1717w



## LEASE SCHEDULE

Master Equipment  
Lease Agreement No. 1990 A

Master Equipment  
Lease Agreement Date: October 18, 1989

Lease Schedule No.: 1

Lease Schedule Date: October 18, 1989

Between CONNELL FINANCE COMPANY, INC. (Lessor) and CARGILL INCORPORATED (Lessee).

1. Equipment Description:

<u>Quantity</u>	<u>Item</u>	<u>Serial Numbers</u>
88	3560 cu. ft. Covered hopper cars	GWIX 2000 through 2087
2. Equipment Location:

The above Equipment has been delivered to Cargill Incorporated at Ludlowville, New York.
3. Base Lease Term:

The date hereof through December 31, 2004.
4. Rental for Base Lease Term:

MONTHLY IN ADVANCE DUE THE FIRST OF EACH MONTH.

1989 Deliveries*	.93306% per month multiplied by Equipment Cost commencing January 1, 1990 through December 1, 2004
1990 Deliveries*	.96345% per month multiplied by Equipment Cost commencing the first of the month following delivery* through December 1, 2004.
5. Equipment Cost:

**\$8800 per car**

Upon receipt of a final acceptance certificate pursuant to Section 34 of the Lease, and payment by the Lessor to the Lessee for refurbishment, Equipment Cost shall be

**\$23,800 per car.**
6. Stipulated Loss Values:

As of any date set forth on Exhibit A hereto, the percentage of Equipment Cost listed opposite such date.

\* A unit is deemed delivered for this purpose in the year in which the Lessee furnishes to the Lessor, a certificate with respect to such unit in the form of Annex I to the Lease.

EXHIBIT A  
1989 Deliveries

1/01/90	102.54507	12/01/93	98.09852	11/01/97	82.62195	10/01/01	59.35797
2/01/90	102.59599	1/01/94	97.87186	12/01/97	82.19498	11/01/01	58.78501
3/01/90	102.65346	2/01/94	97.64683	1/01/98	81.77062	12/01/01	58.20467
4/01/90	102.70452	3/01/94	97.41357	2/01/98	81.34723	1/01/02	57.62236
5/01/90	102.74360	4/01/94	97.17545	3/01/98	80.90738	2/01/02	57.03738
6/01/90	102.77391	5/01/94	96.93346	4/01/98	80.46826	3/01/02	56.44497
7/01/90	102.79469	6/01/94	96.68705	5/01/98	80.02972	4/01/02	55.81748
8/01/90	102.80659	7/01/94	96.43635	6/01/98	79.58917	5/01/02	55.25006
9/01/90	102.81473	8/01/94	96.18118	7/01/98	79.14722	6/01/02	54.64994
10/01/90	102.81320	9/01/94	95.92061	8/01/98	78.70323	7/01/02	54.04775
11/01/90	102.80265	10/01/94	95.65565	9/01/98	78.25268	8/01/02	53.44283
12/01/90	102.78821	11/01/94	95.38614	10/01/98	77.80066	9/01/02	52.83034
1/01/91	102.76395	12/01/94	95.11113	11/01/98	77.34655	10/01/02	52.21571
2/01/91	102.73054	1/01/95	94.83165	12/01/98	76.88581	11/01/02	51.59827
3/01/91	102.69310	2/01/95	94.54752	1/01/99	76.42454	12/01/02	50.97318
4/01/91	102.64897	3/01/95	94.25782	2/01/99	75.95911	1/01/03	50.34589
5/01/91	102.59562	4/01/95	93.96296	3/01/99	75.48799	2/01/03	49.71569
6/01/91	102.53564	5/01/95	93.66400	4/01/99	75.01241	3/01/03	49.07778
7/01/91	102.46864	6/01/95	93.36036	5/01/99	74.53733	4/01/03	48.43453
8/01/91	102.39492	7/01/95	93.05215	6/01/99	74.06009	5/01/03	47.79110
9/01/91	102.31692	8/01/95	92.73921	7/01/99	73.58131	6/01/03	47.14467
10/01/91	102.23179	9/01/95	92.42051	8/01/99	73.10035	7/01/03	46.49589
11/01/91	102.13983	10/01/95	92.09715	9/01/99	72.61760	8/01/03	45.84109
12/01/91	102.04347	11/01/95	91.76897	10/01/99	72.12724	9/01/03	45.18443
1/01/92	101.93987	12/01/95	91.43493	11/01/99	71.63164	10/01/03	44.52234
2/01/92	101.82932	1/01/96	91.09613	12/01/99	71.13318	11/01/03	43.85715
3/01/92	101.71427	2/01/96	90.75241	1/01/00	70.63305	12/01/03	43.18402
4/01/92	101.59342	3/01/96	90.40275	2/01/00	70.13061	1/01/04	42.50838
5/01/92	101.46626	4/01/96	90.04760	3/01/00	69.62124	2/01/04	41.82954
6/01/92	101.33393	5/01/96	89.68997	4/01/00	69.10723	3/01/04	41.14269
7/01/92	101.19632	6/01/96	89.32902	5/01/00	68.59359	4/01/04	40.45020
8/01/92	101.05348	7/01/96	88.96511	6/01/00	68.07764	5/01/04	39.75721
9/01/92	100.90592	8/01/96	88.59785	7/01/00	67.56001	6/01/04	39.06093
10/01/92	100.75299	9/01/96	88.22449	8/01/00	67.04004	7/01/04	38.36199
11/01/92	100.59473	10/01/96	87.84810	9/01/00	66.51304	8/01/04	37.65971
12/01/92	100.43166	11/01/96	87.46827	10/01/00	65.98428	9/01/04	36.94927
1/01/93	100.26313	12/01/96	87.08227	11/01/00	65.45312	10/01/04	36.23609
2/01/93	100.08916	1/01/97	86.69315	12/01/00	64.91484	11/01/04	35.51949
3/01/93	99.91030	2/01/97	86.30053	1/01/01	64.37475	12/01/04	34.79463
4/01/93	99.72622	3/01/97	85.90165	2/01/01	63.83218	1/01/05	35.00000
5/01/93	99.53787	4/01/97	85.49785	3/01/01	63.28244		
6/01/93	99.34538	5/01/97	85.09400	4/01/01	62.72784		
7/01/93	99.14881	6/01/97	84.68827	5/01/01	62.17350		
8/01/93	98.94804	7/01/97	84.28127	6/01/01	61.61667		
9/01/93	98.74221	8/01/97	83.87236	7/01/01	61.05801		
10/01/93	98.53222	9/01/97	83.45710	8/01/01	60.49683		
11/01/93	98.31795	10/01/97	83.04050	9/01/01	59.92836		

## EXHIBIT A

## 1990 Deliveries

2/01/90	101.36742	1/01/94	98.64613	12/01/97	83.63843	11/01/01	59.56134
3/01/90	101.11768	2/01/94	98.43865	1/01/98	81.20432	12/01/01	58.96278
4/01/90	101.51451	3/01/94	98.27596	2/01/98	82.76645	1/01/02	58.36708
5/01/90	101.59644	4/01/94	98.00781	3/01/98	82.37193	2/01/02	57.75855
6/01/90	101.66361	5/01/94	97.78528	4/01/98	81.87219	3/01/02	57.14746
7/01/90	101.72582	6/01/94	97.55841	5/01/98	81.42720	4/01/02	56.57090
8/01/90	101.78422	7/01/94	97.32729	6/01/98	80.97007	5/01/02	55.91441
9/01/90	101.83704	8/01/94	97.09178	7/01/98	80.51612	6/01/02	55.29508
10/01/90	101.88582	9/01/94	96.85089	8/01/98	80.06060	7/01/02	54.67356
11/01/90	101.97970	10/01/94	96.60567	9/01/98	79.59803	8/01/02	54.01916
12/01/90	101.96992	11/01/94	96.35597	10/01/98	79.13389	9/01/02	53.11698
1/01/91	102.00502	12/01/94	96.10079	11/01/98	78.66751	10/01/02	52.78254
2/01/91	102.03513	1/01/95	95.84120	12/01/98	78.19432	11/01/02	52.14513
3/01/91	102.06150	2/01/95	95.57704	1/01/99	77.71918	12/01/02	51.49986
4/01/91	102.08317	3/01/95	95.30732	2/01/99	77.24234	1/01/03	50.85225
5/01/91	102.09531	4/01/95	95.03248	3/01/99	76.75833	2/01/03	50.20160
6/01/91	102.09874	5/01/95	94.75364	4/01/99	76.26971	3/01/03	49.51300
7/01/91	102.09150	6/01/95	94.47018	5/01/99	75.78147	4/01/03	48.87888
8/01/91	102.07573	7/01/95	94.18222	6/01/99	75.29093	5/01/03	48.21152
9/01/91	102.05591	8/01/95	93.88960	7/01/99	74.79872	6/01/03	47.54705
10/01/91	102.02632	9/01/95	93.59124	8/01/99	74.30419	7/01/03	46.87715
11/01/91	101.98754	10/01/95	93.28829	9/01/99	73.80267	8/01/03	46.20412
12/01/91	101.94459	11/01/95	92.98058	10/01/99	73.29943	9/01/03	45.52299
1/01/92	101.89169	12/01/95	92.66705	11/01/99	72.79379	10/01/03	44.81935
2/01/92	101.87947	1/01/96	92.34883	12/01/99	72.28110	11/01/03	44.15219
3/01/92	101.76294	2/01/96	92.02576	1/01/00	71.76660	12/01/03	43.45716
4/01/92	101.68951	3/01/96	91.69676	2/01/00	71.24965	1/01/04	42.75982
5/01/92	101.60677	4/01/96	91.36233	3/01/00	70.72557	2/01/04	42.05887
6/01/92	101.51723	5/01/96	91.02364	4/01/00	70.19668	3/01/04	41.34967
7/01/92	101.42053	6/01/96	90.68005	5/01/00	69.66805	4/01/04	40.63465
8/01/92	101.31695	7/01/96	90.33169	6/01/00	69.13695	5/01/04	39.91909
9/01/92	101.20880	8/01/96	89.97837	7/01/00	68.60402	6/01/04	39.20012
10/01/92	101.09336	9/01/96	89.61893	8/01/00	68.06860	7/01/04	38.47839
11/01/92	100.97094	10/01/96	89.25163	9/01/00	67.52595	8/01/04	37.75321
12/01/92	100.84383	11/01/96	88.88527	10/01/00	66.98140	9/01/04	37.01962
1/01/93	100.70932	12/01/96	88.50969	11/01/00	66.43429	10/01/04	36.28318
2/01/93	100.56769	1/01/97	88.12915	12/01/00	65.87987	11/01/04	35.54320
3/01/93	100.42127	2/01/97	87.74344	1/01/01	65.32348	12/01/04	34.79172
4/01/93	100.26882	3/01/97	87.35143	2/01/01	64.76415	1/01/05	34.00000
5/01/93	100.10995	4/01/97	86.95363	3/01/01	64.19804		
6/01/93	99.94574	5/01/97	86.55318	4/01/01	63.62659		
7/01/93	99.77609	6/01/97	86.14917	5/01/01	63.05527		
8/01/93	99.60103	7/01/97	85.74198	6/01/01	62.48130		
9/01/93	99.42096	8/01/97	85.33119	7/01/01	61.90533		
10/01/93	99.23535	9/01/97	84.91393	8/01/01	61.32668		
11/01/93	99.04123	10/01/97	84.49340	9/01/01	60.74053		
12/01/93	98.84900	11/01/97	84.06519	10/01/01	60.15231		

Final Acceptance Certificate

With reference to the Equipment Lease, dated as of October 18, 1989, between the undersigned and Connell Finance Company, Inc., the undersigned hereby certifies that the refurbishment of the covered hopper cars serial numbers \_\_\_\_\_ has been completed in all respects in accordance with the requirements of the agreement dated \_\_\_\_\_, 1989 between the undersigned and GWI Rail Management.

CARGILL INCORPORATED

By \_\_\_\_\_  
Title